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NEW YORK
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HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

October 27, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Suarna Mehulic, M.D.
REDACTED

Christine Radman, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Suarna Mehulic, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-140) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered,** together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

REDACTED

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Suarna Mehulic, M.D. (Respondent)

A proceeding to review a Determination by a Committee (Committee) from the Board for Professional Medical Conduct (BPMC)

Administrative Review Board (ARB)

Determination and Order No. 11-140

COPY

Before ARB Members D'Anna, Koenig, Wagle, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Christine Radman, Esq.
For the Respondent: Pro Se

The Respondent holds no medical license in New York, but practiced in the State previously as a medical resident. Following a hearing below, a BPMC Committee determined that the Respondent engaged in professional misconduct while working as a Post Graduate Year 2 Resident (PGY2) at New York Downtown Hospital (NYDH). As the sanction for that misconduct, the Committee voted to require that the Respondent submit to a psychiatric examination as a condition to the Respondent receiving a license to practice medicine in New York State. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2011), the Respondent asks the ARB to nullify that Determination and the Petitioner requested that the ARB modify the Determination to provide additional sanctions. After reviewing the record and the parties' review submissions, the ARB votes to sustain the Committee's Determination on the charges. The ARB sustains the limitation that the Respondent submit to a psychiatric evaluation, but we modify the limitation to comply with the conditions for a mandatory psychiatric evaluation under PHL § 230(7)(a). We also place a further limitation on any license the Respondent may receive in New York, to place the Respondent on probation.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2-3), 6530(5), 6530(21) & 6530(32) (McKinney 2011) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing with negligence on more than one occasion,
- practicing with incompetence on more than one occasion,
- willfully making or filing a false report, and,
- failing to maintain accurate patient records.

The charges concerned the Respondent's conduct in treating nine persons [Patients A-I]. Following the hearing, the Committee rendered the Determination now on review.

The Committee determined that the Respondent worked as PGY2 at the Obstetrics/Gynecology (OB/GYN) Department at NYDH between July 2007 and April 2008. The Committee sustained charges that the Respondent practiced with incompetence on more than one occasion during that period by: reporting incorrectly on the nature and results of an imaging study on Patient E, failing to prepare Patient H properly for surgery, and, failing to follow instructions concerning applying pressure during delivery by Patient I. The Committee dismissed all other charges.

In making their findings and reaching their conclusions, the Committee relied on hearing testimony from the Petitioner's expert witness, Robert F. Porges, M.D. The Committee found Dr. Porges well qualified and credible and found testimony by Dr. Porges persuasive regarding the general hierarchy of responsibility in a hospital residency program. The Committee also found persuasive the testimony by: Anca Rosca, M.D., an attending physician at NYDH; Sylvia Nagy,

M.D., who worked as a PGY1 at NYDH in 2007/2008; and Farzaneh Nabizadeh, M.D., who was senior resident at NYDH in 2007/2008. The Committee found Dr. Nasca testified with great consistency and detail, especially concerning the delivery by Patient I and found Dr. Rosca credible with reference to Patient E. The Committee found that the Respondent lacked credibility and that the Respondent testified with an overtone of prosecution and blamed others frequently. The Committee also found that the Respondent testified in a paranoid, unfocused manner and that the Respondent believed there was a conspiracy against her.

The Committee determined that the Respondent demonstrated a lack of skill in three cases at issue and the Committee also expressed serious concern with the Respondent's ability to deal with supervision and common hospital protocols and practices. The Committee noted that the Respondent fails to follow rules and resists instructions and then reacts in a paranoid manner and blames others. The Committee placed a limitation on the issuance of any future license to the Respondent to require the Respondent to submit to a psychiatric evaluation. If the evaluation shows the Respondent suffering from mental impairment, the Committee provided that the Director of the Office for Professional Medical Conduct (OPMC Director) could then set conditions for treatment and name the treating psychiatrist.

Review History and Issues

The Committee rendered their Determination on June 8, 2011. This proceeding commenced on June 21, 2011, when the ARB received the Respondent's and Petitioner's Notices requesting Administrative Review. The record for review contained the Committee's

Determination, the hearing record, the parties' briefs and the parties' reply briefs. The record closed when the ARB received the Petitioner's reply brief on July 29, 2011.

The Respondent argues that this action represents retaliation against her for making complaints against NYDH. The Respondent contends that the witnesses against her caused serious injuries and deaths among the patients at NYDH and that the Petitioner used falsified and incomplete documents against the Respondent.

The Petitioner argued that the Committee failed to impose a limitation or other measure to protect the public against further incompetent medical practice by the Respondent. The Petitioner requested that the ARB modify the Committee's Determination to preclude the Respondent from obtaining a medical license in New York. The Petitioner argued further that if the Respondent were to complete a clinical competency assessment at some point in the future, the Respondent could petition the OPMC Director to re-open that preclusion pursuant to PHL § 230(10)(q). The Petitioner argued further that, if the Respondent does obtain a license at some point, that the ARB should place the Respondent on probation for three years. The Petitioner also proposed probation terms that included requirements for a practice monitor and a psychiatric evaluation.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may

substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd., 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent practiced with incompetence on more than one occasion. The ARB affirms the Committee's Determination to require that the Respondent submit to a psychiatric evaluation as a limitation on licensure, but we modify the limitation to comply with the procedures for evaluations under PHL § 230(7). The ARB also limits any license the Respondent receives in New York by placing such license on probation for three years following the issuance of the license. The terms for the probation appear as the Appendix to this Determination.

The Respondent challenged the hearing testimony and other evidence against her as falsifications and she alleged that the entire action against arose as retaliation for her complaints against NYDH. The Respondent made similar allegations in her testimony before the Committee and the Committee found that the Respondent lacked credibility. The ARB defers to the Committee as the finder of fact as to the Committee's judgment on credibility. The evidence that the Committee found credible, including the testimony by Drs. Porges, Rosca, Nagy and Nabizadeh, demonstrated that the Respondent practiced with incompetence on more than one occasion in treating Patients E, H and I. The Committee also concluded that the Respondent testified in a paranoid and unfocused manner, with undertones of persecution and with blame for others. That testimony resulted in concern by the Committee over whether the Respondent may suffer from a mental condition that could impair her ability to practice medicine safely. The ARB again defers to the Committee in the judgment they reached after observing the Respondent.

The penalty that the Committee imposed addressed the Committee's concerns over possible impairment, but failed to address the Committee's findings concerning incompetence. The provisions at PHL § 230-a establish penalties for professional misconduct, including the provision at § 230-a(6) that provides a limitation on registration or issuance of any further license. The Committee required the Respondent to submit to a psychiatric evaluation, as a limitation on receiving a license to practice in New York. The Committee's Order also set further conditions in the event that the evaluation reveals the need for a course of therapy and treatment. The ARB finds these the conditions that the Committee established inappropriate, because a proceeding to direct a psychiatric evaluation [230(7)(a) Proceeding] exists already in the provisions at PHL § 230(7)(a). Under those provisions, a BPMC Committee may direct a licensee to submit to a psychiatric examination, but only after notice to the Respondent and the opportunity for the Respondent, OPMC and attorneys for those parties to be heard. The provisions at 230(7)(a) also offer the Respondent the opportunity to obtain a separate evaluation to submit at the 230(7)(a) Proceeding. The Committee Determination fails to provide for notice, the opportunity to be heard and the opportunity for the Respondent to submit the separate evaluation. The ARB modifies the Committee's Order to place a limitation on any license the Respondent receives that would require the Respondent to appear at a 230(7)(a) Proceeding and to comply with any Order that results from such a Proceeding.

The Petitioner's Brief argued that the Committee failed to impose a penalty for the Committee's findings on practicing with incompetence. The Petitioner requested a complete limitation on the issuance of a license, with the opportunity for the Respondent to petition to re-open the limitation, pursuant to PHL § 230(10)(q), if the Respondent completes successfully a clinical competency assessment at an institution approved in advance by the OPMC Director.

The Petitioner then requested that the Respondent serve three years on probation after the issuance of a license.

The ARB rejects the request for a clinical assessment. Provisions in PHL § 230(7)(c) create a proceeding in which a Committee may order such an assessment if there is a belief that a licensee has practiced with incompetence. The provisions at § 230(7)(c) provide for notice, an opportunity to be heard and the opportunity for the licensee to present results from a separate assessment, similar to provisions in a 230(7)(a) Proceeding. The Committee made no order for such an assessment. The Committee instead expressed concerns about the Respondent's failure to follow rules and resistance to instructions from supervisors. The ARB concludes that a period of probation, following the issuance of a license, will provide the opportunity to determine if the Respondent has addressed her failures and come to comply with rules, protocols and policies. The ARB places the Respondent on probation for three years, under the terms that appear at the Appendix to this Determination. Those terms will include a practice monitor.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB modifies the Committee's Determination and places a limitation on any medical license the Respondent receives in New York to require that the Respondent appear before a BPMC Committee at a 230(7)(a) Proceeding and complete any course of treatment and therapy that the 230(7)(a) Proceeding determines to be necessary.
3. The ARB limits any license further by placing such license on probation for three years, under the terms that appear as the Appendix to this Determination.

Peter S. Koenig, Sr.
Datta G. Wagle, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Suarna Mehulic, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the Matter of Dr. Mehulic.

Dated: 25 October, 2011

REDACTED

Linda Prescott Wilson

In the Matter of Suarna Mehulic, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the Matter of Dr. Mehulic.

Dated: October 25, 2011

REDACTED

Peter S. Koenig, Sr.

In the Matter of Suarna Mehulic, M.D.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Mehulic.

Dated: 10/25, 2011

REDACTED

Datta G. Wagle, M.D.

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In the Matter of Suarna Mehulic, M.D.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the Matter of Dr. Mehulic.

Dated October 24, 2011

REDACTED

Richard D. Milone, M.D.

In the Matter of Suarna Mehulic, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Mehulic.

Dated: Oct 26, 2011

REDACTED

John A. D'Anna, M.D.

Appendix

Probation Terms

1. The Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by her profession.

2. The Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

5. The Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

6. The Respondent shall maintain legible and complete medical records, which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

7. The Respondent shall practice only when monitored by a licensed physician, board certified in an appropriate specialty, proposed by the Respondent and approved by the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of Medicine.

    a. The Respondent shall make available to the monitor any and all records and access to the practice requested by the monitor, including on-site observation. The practice monitor

shall visit the Respondent's medical practice at each and every location, on a random, unannounced basis, at least monthly, and shall examine a selection (no fewer than 20) of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation from accepted standards of care or refusal to cooperate with the monitor shall be reported with 24 hours to OPMC.

b. The Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.

c. The Respondent shall cause the practice monitor to report quarterly, in writing, to the OPMC Director.

d. The Respondent shall maintain medical malpractice insurance coverage with limits no less than $ 2 million per occurrence and $ 6 million dollars per policy year, in accordance with 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the OPMC Director prior to the Respondent's practice after the effective date of this Order.

8. The Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.